

The Examiner has repeated the rejections of Claims 1-24 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,647,039 to Noffsinger (hereinafter "Noffsinger") and the rejections of claims 2-44 under 35 U.S.C. 103(a).

The Examiner's key contention is that limitations in the specification are not read into the claims. This is a general patent law principle, however, this general rule does not exist in a vacuum; that is, modifications to this general rule exist.

"The written description 'provide[s] guidance as to the meaning of the claims, thereby dictating the manner in which the claims are to be construed, even if the guidance is not provided in explicit definitional format,'" *Bell Atlantic Network Services, Inc. v. Covad Communications Group, Inc.* 262 F.3d 1258, 1270 (Fed. Cir. 2001) (quoting *SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1344). Further, the Federal Circuit has held that "the written description of the preferred embodiments also guides our interpretation of the claim language, as claims must be read in light of the specification." *Id.*

Stated another way, although additional limitations not intended to be present in the claims should not be read into the claims, the claims themselves must be considered in light of the descriptive matter found in the specification. In the instant case, Applicant's claims, properly read in light of the specification, illustrate a structure and method very different from the device disclosed by Noffsinger.

Noffsinger does not meet the requirement that the frame support the strongest range of motion, as that phrase is known in the art. The range of motion that is experienced during a normal bench press exercise is very different from Applicant's

limitation concerning the strongest range of motion. A normal bench press exercise is a movement from substantially near the chest area, to a full arm extension. The strongest range of motion, as it is known in the art, is a single point, sustained for some desired length of time. In other words, no actual movement is performed at all. Rather, a force is exerted, and in the case of an exercise akin to a bench press, this force is exerted where the arms are near full extension. The force is exerted statically, that is, the bar, or other mechanism used to receive the force, never actually experiences a movement from force in the kinetic sense.

The Noffsinger device, should it be subjected to such a force, would not support the user. Therefore, while Noffsinger might be able to support a bench press exercise, it would not allow the performance of a static, strongest range of motion force for any period of time.

The Examiner misunderstands the term "strongest range of motion" when stating that once could not use the Noffsinger device to perform bench press exercises. Applicant's reference to the strongest range of motion in relation to a bench press exercise was made in attempt to clarify the phrase as it is known in the art. Applicant does not dispute that Noffsinger could be used to perform bench press exercises, but Applicant repeats that Noffsinger could not withstand the force imparted to Applicant's device during an exercise that utilizes a strongest range of motion exercise.

Applicant reiterates that when the claims are read in light of the specification, i.e. that Applicant's structure "includes a frame 1 that is a configuration of supports made of metal of high stress capacity." Applicant, page 6, lines 21-22, this description explains and provides meaning to the claims, it does not impermissibly add limitations.

Applicant respectfully contends that if the Examiner views the claims in the proper light, that is, the appropriate definition of the phrase "the strongest range of motion," the claims are unique and patentable. Once the key phrase is properly understood, Applicant's arguments submitted in response to the rejections contained within the March 02, 2005 Office Action take on a new light.

Another way to consider the force contemplated by Applicant's invention is to consider the total force that is exerted downwardly to Noffsinger's device during a bench press exercise. The total force will never be more than the combined weight of the user and the weight supported by the user, regardless of the range of motion. For example, a 200 pound user, bench pressing 200 pounds will never exert more than 400 pounds of force downwardly onto the Noffsinger frame. In contrast, a user utilizing Applicant's device weighing 200 pounds, exerting a force in the strongest range of motion could exert a force downwardly onto Applicant's frame in excess of 1000 pounds, depending on the strength of the user. The Noffsinger frame is not designed to withstand this type of force, and it is specifically this type of force exertion that Applicant's invention must withstand. Although Applicant's claims will be read broadly, the presumption must also be that the device is operable for its intended purpose.

In light of this explanation, Applicant respectfully requests not only consideration of the arguments contained herein; but also reconsideration of the arguments made previously in light of what Applicant hopes has been a successful explanation of the novel aspects of Applicant's invention.

Appl. No. 10/624,788

Reply. dated February 17, 2006

Reply to Office action of August 17, 2005

Reconsideration and further examination is respectfully requested. The Commissioner is hereby authorized to charge any additional fees which may be required for this amendment, or credit any overpayment to Deposit Account No. 12-0115.

In the event that an extension of time is required to file this response, the Commissioner is requested to grant a petition for that extension of time that is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 12-0115.

Applicant has made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Patrick D. Archibald, Applicant's Attorney at (617) 720-0091 so that such issues may be resolved as expeditiously as possible.

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

02/17/2006      /Patrick D. Archibald, Reg. #52,464/  
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